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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/649,973	08/29/2000	Norbert George Vogl	YOR920000532US1	9168

7590 12/18/2006
HARRINGTON & SMITH, LLP
4 Research Drive
Shelton, CT 06484-6212

EXAMINER

BAROT, BHARAT

ART UNIT	PAPER NUMBER
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2155

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/18/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/649,973

Applicant(s)

VOGL ET AL.

Examiner

Bharat N. Barot

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 23-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 23-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>11/15/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

RESPONSE TO REQUEST FOR CONTINUED EXAMINATION (RCE)

1. Claims 1-19 and 23-28 remain for further examination.

The old rejection maintained

2. Applicant's arguments with respect to claims 1-19 and 23-28 and request for continued examination (RCE) filed on November 15, 2006 have been fully considered but they are not deemed to be persuasive for the claims 1-19 and 23-28. The rejection is respectfully maintained as set forth in the last Office Action mailed on August 18, 2006.

Claim Rejections - 35 USC § 103(a)

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1-11, 16-19, and 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takamoto et al (U.S. Patent No. 5,903,724) in view of Crisler et al (U.S. Patent No. 5,515,379).
5. As to claim 1, Takamoto et al teach a method of doing business (see abstract; and figures 1-2) comprising: receiving a request for transmitting digital information, the digital information corresponding to a number of packets; determining an estimated time required to transmit the digital information; scheduling a transmit time for the digital

information; and accepting the digital information for transmission (figures 2, 9, and 15-17; column 6 line 65 to column 7 line 10; column 8 lines 13-36; and column 11 line 22 to column 12 line 54).

However, Takamoto et al do not teach the steps of: receiving, determining, scheduling, and accepting with specific conditions.

Crisler et al teach a method of doing business (see abstract; figure 1; and column 2 line 50 to column 3 line 49) comprising: receiving a request for transmitting digital information, the request comprising a start time and an end time (request for N-time slots having time after transmission begin and time at transmission completed), the digital information corresponding to a number of packets (figures 2-3; column 3 line 50 to column 4 line 28; and column 5 lines 8-55); determining an estimated time required to transmit the digital information based on the number of packets and a network speed; scheduling a transmit time for the digital information (figures 2-3; column 4 lines 29-57; and column 5 line 44 to column 6 line 7); accepting the digital information for transmission only if the estimated time required to transmit is less than or equal to a difference between the transmit time and the end time (N-time slots presently available); and in response to the digital information being accepted for transmission, transmitting the digital information after the start time and prior to the end time (figures 2-3; column 4 line 29 to column 5 line 7; and column 6 lines 8-27).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Crisler et al stated above in the method of Takamoto et al for doing business over a network as stated above because it

would have optimized network performance and increased system efficiency by scheduling a transmit time for the digital information.

6. As to claims 2-3, Crisler et al disclose that the digital information is transmitted at a first price or the digital information is rejected for transmission if the time required to transmit is more than the difference between the transmit time and the end time (figures 2-3; column 4 lines 29-57; and column 5 lines 44-55).

7. As to claims 4-5; Takamoto et al disclose that the digital information is accepted for transmission at a second price; and the digital information is rescheduled by the scheduler and accepted for transmission at a second price after the information is rejected (figures 18-20; and column 12 line 55 to column 14 line 10).

8. As to claims 6-7, 23, and 28, Takamoto et al disclose that receives an acknowledgment of the transmission (see summary of the invention; figures 2-3; and column 7 lines 10-63).

However, Takamoto et al do not disclose that produces a bill on receipt of the acknowledgment or transmission of the digital information, but it would have been obvious and known to one of ordinary skill in the art at the time the invention was made to produces a bill on receipt of the acknowledgment or transmission of the digital information (after providing a service) because it would have improved system management to determine the cost of network usage.

9. As to claims 8-10, Takamoto et al disclose that one or more portions of the digital information are accepted for transmission and are transmitted; and receives an acknowledgment of the transmission of one or more of the portions (see summary of the invention; figures 2-3; and column 7 lines 10-63).

However, Takamoto et al do not disclose that produces a bill on receipt of the acknowledgment for one or more of the portions, but it would have been obvious and known to one of ordinary skill in the art at the time the invention was made to produces a bill on receipt of the acknowledgment for one or more of the portions (after providing a service) because it would have improved system management to determine the cost of network usage.

10. As to claim 11, Takamoto et al disclose that one or more portions of the digital information are initially rejected and then accepted for transmission at one or more second times and at one or more second prices (figures 18-20; and column 12 line 55 to column 14 line 10).

11. As to claim 16, Crisler et al disclose that the digital information is scheduled for one or more retransmissions if the estimated time required to transmit is more than the difference between the transmit time and the end time (figures 2-3; column 4 line 29 to column 5 line 7; and column 6 lines 8-27).

12. As to claim 17, Takamoto et al disclose that the digital information is scheduled for one or more retransmissions if no acknowledgment of the transmission of the digital information is received (figures 18-20; and column 12 line 55 to column 14 line 10).

13. As to claims 18-19, Crisler et al disclose that the digital information is also not transmitted if one or more criteria are not met, where the criteria include any one or more of the following: a file size, a release time, a deadline, zero or more recipients, zero or more user locations, an acknowledgment, a negative acknowledgment, a partial acknowledgment, a bandwidth, a quality of service, a retransmission count, and a retransmission schedule (figures 2-3; column 4 line 29 to column 5 line 7; and column 6 lines 8-27).

14. As to claims 24-25, Takamoto et al do not disclose that the request includes an account identifier receiving from the client regarding how the client can be billed, but it would have been obvious and known to one of ordinary skill in the art at the time the invention was made to receives an account identifier from the client regarding how the client can be billed because it would have improved billing process and reduced system management overhead.

15. As to claims 26-27, Takamoto et al do not disclose that the request includes a maximum cost at which the client can be billed and managing the maximum cost and retransmitting the digital information, but it would have been obvious and known to one

of ordinary skill in the art at the time the invention was made to manages the maximum cost and retransmits the digital information because it would have improved billing process and reduced system management overhead.

16. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takamoto et al (U.S. Patent No. 5,903,724) in view of Crisler et al (U.S. Patent No. 5,515,379) as applied to claim 1 above, and further in view of Duquesnois et al (U.S. Patent No. 6,564,382).

17. As to claims 12-13, neither Takamoto et al nor Crisler et al discloses that the request has one or more priorities; the priority is that the digital information is transmitted within a time period.

Duquesnois et al disclose that the request has one or more priorities; the priority is that the digital information is transmitted within a time period (see abstract; column 2 lines 1-14 and 38-59; column 4 lines 44-52; and column 8 lines 5-21).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Duquesnois et al stated above in the method of Takamoto et al for doing business over a network as stated above because it would have increased over all system efficiency and performance.

18. As to claims 14-15, Duquesnois et al disclose that the time period in any one or more of the following: over night, two days, and one week, and the priority is a freight

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priority that requires the digital information to be transmitted within a freight time period with no acknowledgments (see abstract; column 2 lines 1-14 and 38-59; column 4 lines 44-52; and column 8 lines 5-21).

Response to Arguments

19. Applicant's arguments with respect to claims 1-19 and 23-28 filed on November 15, 2006 have been fully considered but they are not deemed to be persuasive for the claims 1-19 and 23-28.

20. In the remarks, the applicant argues that:

(A) **Argument:** Neither Takamoto nor Crisler teach or suggest "receiving a request for transmitting digital information, the request comprising a start time and an end time" and "accepting the digital information for transmission only if the time required to transmit is less than or equal to the difference between the transmit time and the end time" as recited in amended claim 1.

Response: Crisler et al explicitly teach the steps of: receiving a request for transmitting digital information, the request comprising a start time and an end time (figures 2-3; column 3 line 50 to column 4 line 28; and column 5 lines 8-55, Crisler et al explicitly disclose that the request for N-time slots having beginning and ending times see figures 4-5; and column 6 line 28 to column 7 line 18); and accepting the digital information for transmission only if the time required to transmit is less than or equal to a difference between the transmit time and the end time (N-time slots presently available) (figures 2-3; column 4 line 29 to column 5 line 7; and column 6 lines 8-27, Crisler et al explicitly disclose that accepting the digital information for transmission only if the requested time slots presently available see figure 2 steps 203-205) which are functionally equivalent to the claimed receiving and accepting steps; therefore, the combination of Takamoto and Crisler does disclose the recited/argued subject matter.

(B) **Argument:** There is no disclosure or implication in Takamoto or Crisler of "determining a cost for transmitting the digital information and billing the cost to a client corresponding to the digital information."

Response: In response to applicant's argument that; however, Takamoto et al do not disclose that determining a cost for transmitting the digital information and billing the cost to a client corresponding to the digital information, but it would have been obvious and known to one of ordinary skill in the art at the time the invention was made to produces a bill on receipt of the acknowledgment or transmission of the digital information (after providing a service) because it would have improved system management to determine the cost of network usage.

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(C) **Argument:** Neither Takamoto nor Crisler recites the subject matter of the claims 24-25.

Response: In response to applicant's argument that; however, Takamoto et al do not disclose that the request includes an account identifier receiving from the client regarding how the client can be billed, but it would have been obvious and known to one of ordinary skill in the art at the time the invention was made to receives an account identifier from the client regarding how the client can be billed because it would have improved billing process and reduced system management overhead.

Contact Information

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Bharat Barot** whose Telephone Number is (571) 272-3979. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM. Most facsimile-transmitted patent application related correspondence is required to be sent to the Central FAX Number (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Saleh Najjar**, can be reached at (571) 272-4006.

Patent Examiner Bharat Barot

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December 04, 2006

Bharat Barot
BHARAT BAROT
PRIMARY EXAMINER